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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,798	08/22/2001	Denis Faucher	15309-IUS CC/MG	7972

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CANADA

EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

ASA

Office Action Summary

Application No.

09/933,798

Applicant(s)

FAUCHER, DENIS

Examiner

Ula C Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 5/1/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The Examiner has carefully considered Applicant's present response filed May 1, 2003.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto (US 4,357,377). Yamamoto discloses a thermal insulating and bituminous waterproofing board (abstract). With regard to claims 3-5 and 8-10, the waterproofing material is made of a modified bitumen (i.e. asphalt) which has a thickness of 2 to 25 mm (col 6, ln 51-54). The rubberized bitumen generally contains approximately 5-95% by weight of bitumen and approximately 5-95% by weight of rubber and/or resin (col 5, ln 55-58). The resin (i.e. copolymer) can be styrene-butadiene-styrene copolymer (col 6, ln 9-10). The bitumen mixture also contains approximately 20-90% filler material (col 3, ln 64-68 to col 4, ln 1-19). With regard to claim 6, the thermal insulating layer of Yamamoto, which the Examiner is equating to Applicant's impervious surfacing material, is made of polystyrene, polyethylene, or various resins (col 6, ln 59-68). With regard to claim 7, Yamamoto's fibrous sheets, which the Examiner is equating to Applicant's support sheet, can be made of woven or non-woven fabrics (col 4, ln 57-60). With regard to claims 1 and 2, Yamamoto discloses that the bitumen mixture permeates into the fibrous sheets (col 5, ln 19-22), thus meeting Applicant's limitation that the adherent support sheet is composed of material that allows passage of waterproofing material.

Rejection is maintained.

Response to Arguments

4. Applicant's arguments filed May 1, 2003, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the impervious surfacing material of the present invention cannot have the same composition, function, and properties as the fibrous sheets in Yamamoto (US 4,357,377). This argument is not persuasive because, as shown in Paper #2, Yamamoto's fibrous sheets were equated to Applicant's adherent support sheets. The thermal insulating layer of Yamamoto has been equated to Applicant's impervious surfacing material. Applicant also argues that the fiber sheets of Yamamoto do not confer improvement in water repellent properties of the membrane as described therein. This argument is not commensurate in scope with the claims because the adherent support sheet of the present invention is not composed of water repellent material; Applicant's waterproofing material is the portion of the membrane that has water repellent properties. Applicant further argues that the impervious surface material of the present invention cannot be equated to Yamamoto's thermal insulating layer because they are disposed in a completely different manner and has a different function. This argument is also unpersuasive because the claims do not preclude the use of additional fibrous layers and Yamamoto uses the same polymer in his thermal insulating layer as Applicant does in his impervious surfacing material, i.e. the polystyrene and polyethylene polymers as disclosed in claim 6.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

UCR *UCR*
July 14, 2003

Ula Ruddock